

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOSEPH GRICE,

Petitioner,

vs.

CASE NO. 05-CV-71627-DT
03-CR-80245-01
HON. LAWRENCE P. ZATKOFF

UNITED STATES OF AMERICA,

Respondent.

**OPINION AND ORDER ADOPTING MAGISTRATE
JUDGE'S REPORT AND RECOMMENDATION**

Petitioner filed a Motion to Vacate, Set Aside, or Correct Sentence under 28 U.S.C. §2255 on April 26, 2005 (Docket #26).¹ Respondent filed a response brief and Petitioner filed a reply brief pursuant to an Order issued by Magistrate Judge Donald Scheer. Petitioner also filed a Motion to Strike the Respondent's response (Docket #34). This matter is currently before the Court on Magistrate Judge Scheer's Report and Recommendation of September 6, 2005, in which the Magistrate Judge recommends that Petitioner's Motion to Vacate and Motion to Strike be denied. Petitioner has not filed an objection to the Report and Recommendation, but he instead filed a Notice of Appeal.

The Court has undertaken a thorough review of the court file, the Report and Recommendation and the Notice of Appeal. As a result of that review, the Court adopts the Report and Recommendation denying Petitioner's Motion to Vacate, Set Aside, or Correct Sentence 28 U.S.C. §2255 and denying Petitioner's Motion to Strike. In addition, the Court enters the Report and Recommendation as the findings and conclusions of this Court.

Finally, the Court notes that Petitioner filed a Motion for Bail on August 1, 2005 (Docket

¹All docket entries referenced are found in the criminal docket, however, such documents pertaining to the Motion to Vacate (i.e., docket entries from #26 forward) will also be found on the civil docket following the issuance of this Opinion and Order.

#31), asserting that since his Motion to Vacate would result in dismissal of his indictment, he would have served more time than required. Because the Petitioner's Motion to Vacate has been denied, the grounds upon which Petitioner relies to be entitled to bail are without merit. Accordingly, the Court also denies Petitioner's Motion for Bail.

Therefore, IT IS HEREBY ORDERED that Petitioner's Motion to Vacate Sentence, Motion to Strike, and Motion for Bail are DENIED. IT IS FURTHER ORDERED that Petitioner's cause of action is DISMISSED WITH PREJUDICE. Judgment shall be entered accordingly.

IT IS SO ORDERED.

Dated: September 27, 2005

s/Lawrence P. Zatkoff
LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

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